IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5931 of 2002
WITH
CIVIL APPLICATION No 6769 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

JERAM TALSHI

Appearance:

1. Special Civil Application No. 5931 of 2002

MR PD BHATE, AGP for Petitioner No. 1

MR PANKAJ R DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 13/02/2004

ORAL JUDGEMENT

1. The State of Gujarat has approached this Court under Article 227 of the Constitution of India to

challenge the judgment and award rendered by the Labour Court, Rajkot in Reference (LCR) No. 223 of 1989 dated 20th September, 2000. By the said award the petitioner has been directed to reinstate the respondent on his original post with continuity of service together with full back wages.

2. The facts of the case in nutshell can be stated as under :-

2.1. According to the respondent, he was working as Safai Kamdar on daily wage basis with the petitioner in its P.W.D. Stores, which is situated behind Dharam Talkies in the city of Rajkot. According to him, he worked there since October 1981 till his service was terminated by the petitioner on 3rd October, 1988. According to the respondent, before terminating the service neither any notice nor any pay was paid to him in lieu of the notice. His grievance is that despite the fact that he had rendered about 7 years service, his job was orally terminated. According to him, nonpayment of the salary in lieu of the notice or not issuing prior notice to him amounted to violation of section 25-F of the Industrial Disputes Act (for short 'I.D. Act'). It is his grievance that even subsequently when the necessity to fill up the said post arose, others were employed but no chance was given to him. He, therefore, submitted that it was also violation of section 25-G and H of the I.D. Act. His demand for employment was also turned down by the petitioner and, therefore, he raised a dispute which ultimately came to be referred to the Labour Court under section 10(1) (c) by the Assistant Labour Commissioner, Rajkot for adjudication vide order dated 3rd January, 1989. The respondent claimed reinstatement with continuity of service and full back wages.

2.2. The said claim was resisted by the petitioner by filing written statement at Exh. 10 contending that the respondent was not a 'workman' within the meaning of definition of the 'workman' under the I.D. Act, that the petitioner being a "State" it was required to be served notice in accordance with section 80 of the Code of Civil Procedure and that the respondent is governed by the manual rules which have been framed by the Government and he is not governed under the provisions of the I.D. Act. Thus the petitioner prayed for dismissal of the reference.

2.3. At the hearing, the respondent produced documents at Exhs. 13 to 17. He also examined himself at Exh.

12. His examination-in-chief was conducted on 20th July, 1994. It, however, appears that he was not cross-examined by the otherside i.e. the petitioner. Before the Labour Court the respondent reiterated the facts which had been stated in the statement of claim and also stated that after the termination of the service by the petitioner, he was without any job and he totally depended on the income of his wife, who was a sweeper.

3. On the strength of the material which was produced before it by way of the aforesaid evidence, the Labour Court came to the conclusion that the service of the respondent was terminated without following the proper procedure. The Labour Court came to the conclusion that such termination violated the provisions of section 25 of the I.D. Act. The Labour Court further came to the conclusion that after the respondent was relieved from the service, one Dhiru Savji was appointed and subsequently in his place one Premaji Bhikha was appointed. These findings were given by the Labour Court on the strength of the unchallenged evidence of the respondent. It, therefore, allowed the reference and directed that the respondent be reinstated on his original post with continuity of service and full back wages. It is this judgment which is under challenge in this petition.

4. Mr. P.D. Bhate, Ld. AGP appearing for the petitioner has raised the following contentions -
(i) that the respondent is not a 'workman' as defined under the provisions of the I.D. Act and he is not entitled to receive the reliefs claimed, (ii) that the petitioner is a department of Roads and Building of the State Government and it is not an 'industry' within the meaning of provisions of the I.D. Act and it is not amenable to the said Act and (iii) lastly he has submitted that the respondent was merely Safai Kamdar and he was intermittently given work on daily wage basis. In view thereof, the payment of 100% back wages was not proper. He, therefore, prayed that the petition be allowed and the award be quashed and set aside.

4.1. As against that, Mr. Pankaj R. Desai appearing for the respondent has supported the judgment and award of the Labour Court and has submitted that inspite of the fact that ample opportunity was given to the petitioner for cross-examination of the witnesses and produce its evidence on record, the same was not availed of. According to him, neither the respondent has been cross-examined nor any evidence has been produced by it in support of its case. He has further submitted that

considering the facts and circumstances of the case, the award of the Labour Court was just and proper and did not call for any interference by this Court. According to him, this petition has no merit and it deserves to be dismissed.

4.2. It may be noted here that in support of his contention Mr. Bhate, Ld. AGP has placed reliance on the decision rendered in the case of State of U.P. v/s. Ajaykumar reported in (1997) 4 S.C.C. page 88 and also decision rendered in the case of Himanshukumar Vidhyarthi v/s. State of Bihar reported in 1997 S.C. at page 3657.

5. Having carefully gone through the record of this petition and in particular the judgment of the Labour Court, it clearly appears that the say of the respondent that he was working since October 1981 with the petitioner as Safai Kamdar on daily wage basis till October 1988 is amply proved because the said fact has not been controverted by the petitioner in any manner. It may be noted here that the respondent has stated this fact not only in the statement of claim but even on oath when he examined himself before the Labour Court. The petitioner does not seem to have raised any contrary contention in the reply that was filed at Exh. 10 nor has it chosen to challenge the respondent on this aspect by cross-examining him. Further that the say of the respondent is that his service was orally terminated by the petitioner without following due procedure. This fact is again stated on oath by the respondent. The petitioner has neither controverted the same in its written statement nor it has led any evidence even documentary to show that the service was terminated by passing appropriate written order. The respondent has also stated on oath that before terminating the service of the respondent the petitioner had not complied with the requisite conditions as prescribed under section 25-F of the I.D. Act. Even this aspect has not been controverted by the petitioner. As stated above, the only contention that has been raised is that provisions of the I.D. Act are not applicable. It may be noted here that the entire version of the respondent has gone unchallenged and the documentary evidence produced by him has remained uncontroverted. It appears from the judgment that period of almost two years was granted to the petitioner to cross-examine the respondent, however, the said opportunity was never availed of by the petitioner. It further appears that the petitioner was thereafter given chance to lead evidence on its behalf and for that also sufficient time was granted by the Court. The judgment shows that the petitioner had

engaged different advocates at different time and names of the two learned advocate have been mentioned in para. 5 of the judgment. It is stated at the bar by Mr. Desai that during the proceedings not less than 7 advocates were engaged by the petitioner but none of them had taken care either to cross-exmaine the respondent or to lead any evidence in support of its case and to negative the case of the petitioner. When this is the situation, I see no reason to find fault with Labour Court when it came to the conclusion that the respondent's service was wrongly terminated and termination was illegal requiring reinstatement. It may be noted here that it was the contention of the petitioner that it was not an 'industry' within the meaning of provisions of the I.D. Act. The same contention has been raised before me by Mr. Bhate. However, one should not overlook the fact that this is a mixed question of fact and law for which a factual foundation is required to be led in the trial Court. No evidence has been led either oral or documentary by the petitioner before the Labour Court. Without any such evidence being there on record, the petitioner cannot now be permitted to raise such plea.

5.1. So far the contention with regard to respondent not being a 'workman' is concerned, his say is that he has been continuously working with the petitioner since October 1981. He has rendered about 7 years service. Obviously this aspect is also not challenged and in such circumstances, it is very clear that he must have worked for more than 240 days in a year on the said post bringing him within the purview of the definition of the workman. When the petitioner is 'industry' and when the respondent is found to be workman and when it is clear that he has rendered continuous service of almost 7 years to the petitioner, before terminating his service the petitioner was required to follow the procedure under section 25-F of the I.D. Act. The same has not been done. The order of reinstatement by the Labour Court by holding that the respondent was entitled to reinstatement cannot be interferred with.

5.2. Mr. Bhate's submission with regard to payment of full back wages to the respondent is required to be partly accepted. In the present case, the Labour Court has come to the conclusion that the respondent was out of job all throughout after his service was terminated. According to him, he was totally dependent on his wife's income. He has, therefore, prayed that 100% back wages was awardable to him and the Labour Court has accepted the same and accordingly done so. One cannot ignore the fact that though it is the say of the respondent that he

was not having income, one cannot overlook the fact that nobody can maintain himself all these years without any income. A judicial notice can always be taken of the fact that for surviving all these years, the respondent may not have remained totally dependant on his wife's income but must have done some job to raise some income to maintain himself. In such event the payment of full back wages is slightly on higher side.

6. Considering the aforesaid, the petition is partly allowed. The petitioner now will be required to pay 70% back wages instead of 100% as per the direction of the Labour Court. Rest of the order of the Labour Court is not disturbed. Rule is made absolute to the aforesaid extent with no order as to costs.

In view of the above order, the Civil Application No. 6769 of 2003 does not survive and it is disposed of accordingly.

[AKSHAY H. MEHTA, J.]

* Pansala.